

MONROE COUNTY CLERK'S OFFICE

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No. Pages: 26

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Date: 12/06/2019

Time: 6:22:17 AM

Return To:
PAUL JAMES HANLY JR
One Court Street
Alton, IL 62002

Winder, James Jr.

Simon, Father David P.
Church of the Holy Name of Jesus of Rochester, New York
Church of St. Charles Borromeo, of Greece, N.Y.
St. Patrick's Church of Victor
The Church of St. Francis De Sales

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|------------------------------|----------|--------------|
| State Fee Index Number | \$165.00 | |
| County Fee Index Number | \$26.00 | |
| State Fee Cultural Education | \$14.25 | |
| State Fee Records | \$4.75 | Employee: JM |
| Management | | |

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| Total Fees Paid: | \$210.00 |
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State of New York

MONROE COUNTY CLERK'S OFFICE
WARNING – THIS SHEET CONSTITUTES THE CLERKS
ENDORSEMENT, REQUIRED BY SECTION 317-a(5) &
SECTION 319 OF THE REAL PROPERTY LAW OF THE
STATE OF NEW YORK. DO NOT DETACH OR REMOVE.

ADAM J BELLO

MONROE COUNTY CLERK



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

JAMES WINDER, JR.,

Plaintiff,

v.

FATHER DAVID P. SIMON; CHURCH OF THE HOLY NAME OF
JESUS OF ROCHESTER, NEW YORK; CHURCH OF ST. CHARLES
BORROMEO, OF GREECE, N.Y., a/k/a, CHURCH OF ST.
CHARLES BORROMEO; ST. PATRICK'S CHURCH OF VICTOR;
THE CHURCH OF ST. FRANCIS DE SALES, a/k/a, THE
CHURCH OF ST. FRANCIS DESALES; DE SALES HIGH SCHOOL;
OUR LADY OF PEACE ROMAN CATHOLIC PARISH OF GENEVA,
N.Y.; SAINT AUGUSTINE'S CHURCH, ROCHESTER, NY,
a/k/a, SAINT AUGUSTINE'S CHURCH, ROCHESTER, N.Y.;
SAINT MONICA'S CHURCH; ST. MARY'S CATHOLIC CHURCH
GERMAN OF DANSVILLE, NY; and HOLY FAMILY CATHOLIC
COMMUNITY, INC.,

Defendants.

[Please see Attached Rider for Defendants' Addresses]

Index No.

SUMMONS

Date Index No. Purchased:
December 5, 2019


To the above named Defendant(s)

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is one or more Defendant resides in Monroe County, New York, which is located in Monroe County, New York.

Dated: New York, New York
December 5, 2019

SIMMONS HANLY CONROY LLC



Paul J. Hanly, Jr.
Attorneys for Plaintiff
112 Madison Avenue, 7th Floor
New York, NY 10016
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE**

JAMES WINDER, JR.,

Plaintiff,

v.

FATHER DAVID P. SIMON; CHURCH OF THE HOLY NAME OF JESUS OF ROCHESTER, NEW YORK; CHURCH OF ST. CHARLES BORROMEO, OF GREECE, N.Y., a/k/a, CHURCH OF ST. CHARLES BORROMEO; ST. PATRICK'S CHURCH OF VICTOR; THE CHURCH OF ST. FRANCIS DE SALES, a/k/a, THE CHURCH OF ST. FRANCIS DESALES; DE SALES HIGH SCHOOL; OUR LADY OF PEACE ROMAN CATHOLIC PARISH OF GENEVA, N.Y.; SAINT AUGUSTINE'S CHURCH, ROCHESTER, NY, a/k/a, SAINT AUGUSTINE'S CHURCH, ROCHESTER, N.Y.; SAINT MONICA'S CHURCH; ST. MARY'S CATHOLIC CHURCH GERMAN OF DANSVILLE, NY; and HOLY FAMILY CATHOLIC COMMUNITY, INC.,

Defendants.

Index No.

RIDER TO SUMMONS

| Defendant/Counsel | Service Address |
|--|---|
| FATHER DAVID P. SIMON | 292B Severne Road Himrod, Yates County, New York |
| CHURCH OF THE HOLY NAME OF JESUS OF ROCHESTER, NEW YORK | Philip G. Spellane, Esq. Harris Beach PLLC 99 Garnsey Road Pittsford, New York 14534 |
| CHURCH OF ST. CHARLES BORROMEO, OF GREECE, N.Y., a/k/a, CHURCH OF ST. CHARLES BORROMEO | Philip G. Spellane, Esq. Harris Beach PLLC 99 Garnsey Road Pittsford, New York 14534 |
| ST. PATRICK'S CHURCH OF VICTOR | Philip G. Spellane, Esq. Harris Beach PLLC 99 Garnsey Road Pittsford, New York 14534 |
| THE CHURCH OF ST. FRANCIS DE SALES, a/k/a, THE CHURCH OF ST. FRANCIS DESALES | Philip G. Spellane, Esq. Harris Beach PLLC 99 Garnsey Road Pittsford, New York 14534 |
| DE SALES HIGH SCHOOL | 130 Exchange Street Geneva, Ontario County, New York |

| | |
|---|---|
| OUR LADY OF PEACE ROMAN CATHOLIC PARISH OF GENEVA, N.Y. | Philip G. Spellane, Esq. Harris Beach PLLC 99 Garnsey Road Pittsford, New York 14534 |
| SAINT AUGUSTINE'S CHURCH, ROCHESTER, NY, a/k/a, SAINT AUGUSTINE'S CHURCH, ROCHESTER, N.Y. | Philip G. Spellane, Esq. Harris Beach PLLC 99 Garnsey Road Pittsford, New York 14534 |
| SAINT MONICA'S CHURCH | Philip G. Spellane, Esq. Harris Beach PLLC 99 Garnsey Road Pittsford, New York 14534 |
| ST. MARY'S CATHOLIC CHURCH GERMAN OF DANSVILLE, NY | Philip G. Spellane, Esq. Harris Beach PLLC 99 Garnsey Road Pittsford, New York 14534 |
| HOLY FAMILY CATHOLIC COMMUNITY, INC. | Philip G. Spellane, Esq. Harris Beach PLLC 99 Garnsey Road Pittsford, New York 14534 |

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

JAMES WINDER, JR.,

Plaintiff,

v.

FATHER DAVID P. SIMON; CHURCH OF THE HOLY NAME OF JESUS OF ROCHESTER, NEW YORK; CHURCH OF ST. CHARLES BORROMEO, OF GREECE, N.Y., a/k/a, CHURCH OF ST. CHARLES BORROMEO; ST. PATRICK'S CHURCH OF VICTOR; THE CHURCH OF ST. FRANCIS DE SALES, a/k/a, THE CHURCH OF ST. FRANCIS DESALES; DE SALES HIGH SCHOOL; OUR LADY OF PEACE ROMAN CATHOLIC PARISH OF GENEVA, N.Y.; SAINT AUGUSTINE'S CHURCH, ROCHESTER, NY, a/k/a, SAINT AUGUSTINE'S CHURCH, ROCHESTER, N.Y.; SAINT MONICA'S CHURCH; ST. MARY'S CATHOLIC CHURCH GERMAN OF DANSVILLE, NY; and HOLY FAMILY CATHOLIC COMMUNITY, INC.,

Defendants.

Index No.

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff James Winder, Jr., by his attorneys Simmons Hanly Conroy LLC and the Law Offices of Mitchell Garabedian, brings this action against Father David P. Simon; Church of the Holy Name of Jesus of Rochester, New York; Church of St. Charles Borromeo, of Greece, N.Y., also known as Church of St. Charles Borromeo; St. Patrick's Church of Victor; the Church of St. Francis De Sales, also known as the Church of St. Francis DeSales; De Sales High School; Our Lady of Peace Roman Catholic Parish of Geneva, N.Y.; Saint Augustine's Church, Rochester, NY, also known as Saint Augustine's Church, Rochester, N.Y.; Saint Monica's Church; St. Mary's Catholic Church German of Dansville, NY; and Holy Family Catholic Community, Inc., and alleges, on personal knowledge as to himself and on information and belief as to all other matters, as follows:

JURISDICTION AND VENUE

1. This Court has personal jurisdiction over the Defendants pursuant to

CPLR 301 and 302, in that the Defendants reside in New York.

2. This Court has jurisdiction over this action because the amount of damages Plaintiff seeks exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

3. Venue for this action is proper in the County of Monroe pursuant to CPLR 503 in that one or more of the Defendants reside in this County and a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this County.

PARTIES

4. Plaintiff James Winder, Jr. ("Plaintiff") is an individual residing in Rochester, Monroe County, New York.

5. Defendant Father David P. Simon ("Father Simon") is an individual with a residential address at 292B Severne Road, Himrod, Yates County, New York. At all relevant times, Defendant Father Simon served as a Roman Catholic priest under the supervision of the Roman Catholic Bishop of Rochester, New York.

6. Defendant Church of the Holy Name of Jesus of Rochester, New York ("Holy Name") was a Roman Catholic parish within and under the authority of the Bishop of Rochester and was a religious corporation organized pursuant to the Religious Corporations Law with its principal office formerly on St. Martin's Way, Rochester, Monroe County, New York, and now at 3003 Dewey Avenue, Rochester, Monroe County, New York. At relevant and material times, the Roman Catholic Bishop of Rochester, New York was the President of Holy Name, and the Roman Catholic Vicar General of Rochester, New York was the Vice-President of Holy Name.

7. Defendant Church of St. Charles Borromeo, of Greece, N.Y., also known as Church of St. Charles Borromeo ("St. Charles") is a Roman Catholic parish within and under the authority of the Bishop of Rochester and is a religious corporation organized pursuant to the Religious Corporations Law with its principal office at 3003 Dewey Avenue, Rochester, Monroe County, New York. As a result of a corporate merger,

Defendant St. Charles is the legal successor to Defendant Holy Name.

8. Defendant St. Patrick's Church of Victor ("St. Patrick's") is a Roman Catholic parish within and under the authority of the Bishop of Rochester and is a New York domestic not-for-profit corporation with its principal office at 115 Maple Avenue, Victor, Ontario County, New York. At relevant and material times, the Roman Catholic Bishop of Rochester, New York was the President of St. Patrick's, and the Roman Catholic Vicar General of Rochester, New York was the Vice-President of St. Patrick's.

9. Defendant the Church of St. Francis De Sales, also known as the Church of St. Francis DeSales ("St. Francis") was a Roman Catholic parish within and under the authority of the Bishop of Rochester and was a religious corporation organized pursuant to the Religious Corporations Law with its principal office at 130 Exchange Street, Geneva, Ontario County, New York. At relevant and material times, the Roman Catholic Bishop of Rochester, New York was the President of St. Francis, and the Roman Catholic Vicar General of Rochester, New York was the Vice-President of St. Francis.

10. Defendant De Sales High School ("De Sales") was a Roman Catholic high school within and under the authority of the Bishop of Rochester with its principal office formerly at 90 Pulteney Street, Geneva, Ontario County, New York, and now at 130 Exchange Street, Geneva, Ontario County, New York. At all relevant times, De Sales was operated by Defendant St. Francis.

11. Defendant Our Lady of Peace Roman Catholic Parish of Geneva, N.Y. ("Our Lady") is a Roman Catholic parish within and under the authority of the Bishop of Rochester and is a religious corporation organized pursuant to the Religious Corporations Law with its principal office at 130 Exchange Street, Geneva, Ontario County, New York. As a result of a corporate merger, Defendant Our Lady is the legal successor to Defendants St. Francis and De Sales.

12. Defendant Saint Augustine's Church, Rochester, NY, also known as Saint Augustine's Church, Rochester, N.Y. ("St. Augustine's") was a Roman Catholic parish

within and under the authority of the Bishop of Rochester and was a religious corporation organized pursuant to the Religious Corporations Law with its principal office formerly at 410 Chili Avenue, Rochester, Monroe County, New York, and now at 34 Monica Street, Rochester, Monroe County, New York. At relevant and material times, the Roman Catholic Bishop of Rochester, New York was the President of St. Augustine's, and the Roman Catholic Vicar General of Rochester, New York was the Vice-President of St. Augustine's.

13. Defendant Saint Monica's Church ("St. Monica's") is a Roman Catholic parish within and under the authority of the Bishop of Rochester and is a religious corporation organized pursuant to the Religious Corporations Law with its principal office at 34 Monica Street, Rochester, Monroe County, New York. As a result of a corporate merger, Defendant St. Monica's is the legal successor to Defendant St. Augustine's.

14. Defendant St. Mary's Catholic Church German of Dansville, NY ("St. Mary's") was a Roman Catholic parish within and under the authority of the Bishop of Rochester and was a New York religious corporation with its principal office at 40 Elizabeth Street, Dansville, Livingston County, New York. At relevant and material times, the Roman Catholic Bishop of Rochester, New York was the President of St. Mary's, and the Roman Catholic Vicar General of Rochester, New York was the Vice-President of St. Mary's.

15. Defendant Holy Family Catholic Community, Inc. ("Holy Family") is a Roman Catholic parish within and under the authority of the Bishop of Rochester and is a New York domestic not-for-profit corporation with its principal office at 206 Fremont Street, Wayland, Steuben County, New York. As a result of a corporate merger, Defendant Holy Family is the legal successor to Defendant St. Mary's.

FACTS COMMON TO ALL CLAIMS

16. Plaintiff and his family were parishioners of and attended Holy Name

when Plaintiff was a minor child. Plaintiff also participated in Confraternity of Christian Doctrine ("CCD") classes as a minor child, and Plaintiff's mother worked as a secretary at Holy Name when Plaintiff was a minor child.

17. Defendant Father Simon was ordained a Roman Catholic priest in approximately 1967. From approximately 1967 to approximately 1972, Father Simon served as a priest at Defendant St. Patrick's. From approximately 1973 to approximately 1975, Father Simon served as the chaplain at Defendant De Sales, while residing at Defendant St. Francis. From approximately 1976 to approximately 1977, Father Simon served as a priest at Defendant St. Augustine's. In approximately 1978, Father Simon served as a priest at Defendant St. Mary's. From approximately 1979 to approximately 1983, Father Simon served as a priest at Defendant Holy Name, where Plaintiff and Plaintiff's family were parishioners.

18. Prior to Father Simon being assigned to Defendant Holy Name, Defendants St. Patrick's, St. Francis, De Sales, St. Augustine's, and St. Mary's, and their respective executive officers knew or should have known it was not safe to allow Father Simon to have unsupervised contact with minor children, in that Father Simon posed a sexual danger to minor children. The Roman Catholic Bishop and Vicar General of Rochester concealed the information about the danger Father Simon posed to minor children, in order that the Roman Catholic Bishop and Vicar General of Rochester could assign Father Simon to work at parishes, including Holy Name. Defendants St. Patrick's, St. Francis, De Sales, St. Augustine's, and St. Mary's aided and abetted the Roman Catholic Bishop and Vicar General of Rochester in concealing the information about the danger Father Simon posed to minor children.

19. Through his positions at, within, or for Defendant Holy Name, Father Simon was put in direct contact with members of the Plaintiff's family, including Plaintiff, a minor parishioner of Defendant Holy Name.

20. In approximately 1979 when Plaintiff was approximately fifteen years of

age, Father Simon took Plaintiff on an overnight trip to the Finger Lakes region of New York.

21. Father Simon used this encounter, gained through his position at Holy Name which granted him access to Plaintiff when Plaintiff was approximately fifteen years of age, to sexually assault, sexually abuse, and have sexual contact with the Plaintiff in violation of the laws of the State of New York.

Supervisory Defendants' Responsibility for the Abuse Committed by Father Simon

22. At all times material hereto, Father Simon was under the management, supervision, employ, direction and/or control of Defendants Holy Name, St. Patrick's, St. Francis, De Sales, St. Augustine's, and St. Mary's.

23. Through his positions at, within, or for Defendant Holy Name, Father Simon was put in direct contact with Plaintiff.

24. Father Simon used his position at, within, or for Defendant Holy Name and the implicit representations made by Defendant Holy Name about Father Simon's character that accompanied that position, to gain Plaintiff's trust and confidence and to create an opportunity to be alone with, and to sexually touch, Plaintiff.

25. Defendant Holy Name had the duty to reasonably manage, supervise, control and/or direct priests who served at Holy Name, and specifically, had a duty not to aid pedophiles such as Father Simon by assigning, maintaining, and/or appointing them to positions with access to minors.

26. Defendant St. Patrick's had a duty to reasonably supervise, direct, manage, and control Father Simon when Father Simon was assigned to St. Patrick's. Defendant St. Patrick's had a duty not to assist, aid, and abet the Roman Catholic Bishop and Vicar General of Rochester in concealing information which would have disclosed that Father Simon posed a danger to minor children when he had contact with such minors, especially when Defendant St. Patrick's knew or should have known that Father Simon posed such a danger and Father Simon was being transferred to other parishes where he

would have unsupervised contact with minors. Defendant St. Patrick's assisted, aided, and abetted the Roman Catholic Bishop and Vicar General of Rochester in concealing information showing that Father Simon posed a danger to minor children from parishes to which Father Simon was subsequently assigned.

27. Defendant St. Francis had a duty to reasonably supervise, direct, manage, and control Father Simon when Father Simon was residing at St. Francis and serving as the chaplain at Defendant De Sales, which was operated by Defendant St. Francis. Defendant St. Francis had a duty not to assist, aid, and abet the Roman Catholic Bishop and Vicar General of Rochester in concealing information which would have disclosed that Father Simon posed a danger to minor children when he had contact with such minors, especially when Defendant St. Francis knew or should have known that Father Simon posed such a danger and Father Simon was being transferred to other parishes where he would have unsupervised contact with minors. Defendant St. Francis assisted, aided, and abetted the Roman Catholic Bishop and Vicar General of Rochester in concealing information showing that Father Simon posed a danger to minor children from parishes to which Father Simon was subsequently assigned.

28. Defendant De Sales had a duty to reasonably supervise, direct, manage, and control Father Simon when Father Simon was assigned to De Sales. Defendant De Sales had a duty not to assist, aid, and abet the Roman Catholic Bishop and Vicar General of Rochester in concealing information which would have disclosed that Father Simon posed a danger to minor children when he had contact with such minors, especially when Defendant De Sales knew or should have known that Father Simon posed such a danger and Father Simon was being transferred to other parishes where he would have unsupervised contact with minors. Defendant De Sales assisted, aided, and abetted the Roman Catholic Bishop and Vicar General of Rochester in concealing information showing that Father Simon posed a danger to minor children from parishes to which Father Simon was subsequently assigned.

29. Defendant St. Augustine's had a duty to reasonably supervise, direct, manage, and control Father Simon when Father Simon was assigned to St. Augustine's. Defendant St. Augustine's had a duty not to assist, aid, and abet the Roman Catholic Bishop and Vicar General of Rochester in concealing information which would have disclosed that Father Simon posed a danger to minor children when he had contact with such minors, especially when Defendant St. Augustine's knew or should have known that Father Simon posed such a danger and Father Simon was being transferred to other parishes where he would have unsupervised contact with minors. Defendant St. Augustine's assisted, aided, and abetted the Roman Catholic Bishop and Vicar General of Rochester in concealing information showing that Father Simon posed a danger to minor children from parishes to which Father Simon was subsequently assigned.

30. Defendant St. Mary's had a duty to reasonably supervise, direct, manage, and control Father Simon when Father Simon was assigned to St. Mary's. Defendant St. Mary's had a duty not to assist, aid, and abet the Roman Catholic Bishop and Vicar General of Rochester in concealing information which would have disclosed that Father Simon posed a danger to minor children when he had contact with such minors, especially when Defendant St. Mary's knew or should have known that Father Simon posed such a danger and Father Simon was being transferred to other parishes where he would have unsupervised contact with minors. Defendant St. Mary's assisted, aided, and abetted the Roman Catholic Bishop and Vicar General of Rochester in concealing information showing that Father Simon posed a danger to minor children from parishes to which Father Simon was subsequently assigned.

31. As a result of Defendants St. Patrick's, St. Francis, De Sales, St. Augustine's, and St. Mary's assisting, aiding, and abetting the Roman Catholic Bishop and Vicar General of Rochester in concealing information which would have disclosed that Father Simon posed a danger to minor children, Father Simon was assigned to Holy Name without any notice to the parishioners of Holy Name about the danger Father Simon

posed to minor children. As a result, Father Simon had unsupervised access to Plaintiff, a minor child, who Father Simon sexually abused.

32. Defendants Holy Name, St. Patrick's, St. Francis, De Sales, St. Augustine's, and St. Mary's knew and/or reasonably should have known, and/or knowingly condoned, and/or covered up, the inappropriate and unlawful sexual activities of Father Simon, who sexually abused Plaintiff.

33. Defendant Holy Name had a duty to the Plaintiff to properly supervise Holy Name priests to ensure that priests did not use their positions with Holy Name as a tool for grooming and assaulting vulnerable children. Defendant Holy Name knew or should have known that Father Simon used his positions with Holy Name to sexually abuse minor children, including the Plaintiff.

Consequences of the Abuse

34. Plaintiff suffered personal physical and psychological injuries and damages as a result of Father Simon's actions, as well as other damages related thereto, as a result of the childhood sexual abuse Plaintiff sustained.

35. As a direct result of the Defendants Father Simon's, Holy Name's, St. Patrick's, St. Francis', De Sales', St. Augustine's, and St. Mary's conduct described herein, Plaintiff suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, and physical manifestations of emotional distress. Plaintiff was prevented from obtaining the full enjoyment of life; has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling; and has incurred and will continue to incur loss of income and/or loss of earning capacity. As a victim of Father Simon's sexual abuse, Plaintiff is unable at this time to fully describe all of the details of that abuse and the extent of the harm he suffered as a result.

CAUSES OF ACTION**FIRST CAUSE OF ACTION****Assault**

36. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 35 as if fully set forth herein.

37. In approximately 1979 when Plaintiff was approximately fifteen years of age, Father Simon intentionally touched Plaintiff's body when Father Simon engaged in the sexual behavior and lewd and lascivious conduct described above. Such conduct placed Plaintiff in imminent apprehension of harmful contact, including apprehension of further sexual contact.

38. As a direct and proximate result of Defendant Father Simon's actions, which included but were not limited to placing the Plaintiff in imminent and reasonable apprehension of harmful and offensive contact, Plaintiff suffered and will continue to suffer the severe injuries and damages described herein, including but not limited to, mental and emotional distress.

39. By reason of the foregoing, Defendant Father Simon is liable to Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

SECOND CAUSE OF ACTION**Battery**

40. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 35 as if fully set forth herein.

41. In approximately 1979 when Plaintiff was approximately fifteen years of age, Father Simon intentionally touched Plaintiff's body when Father Simon engaged in the sexual behavior and lewd and lascivious conduct described above. Such bodily contact was offensive and without consent, because Plaintiff, as a minor, was incapable of consenting to these acts.

42. As a direct and proximate result of Defendant Father Simon's actions, which included but were not limited to unjustified harmful and offensive physical

contact and touching, Plaintiff suffered and will continue to suffer the severe injuries and damages described herein, including but not limited to, mental and emotional distress.

43. By reason of the foregoing, Defendant Father Simon is liable to Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

THIRD CAUSE OF ACTION

Intentional Infliction of Emotional Distress

44. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 35 as if fully set forth herein.

45. By engaging in the explicit sexual behavior and lewd and lascivious conduct described above, either Defendant Father Simon intended to inflict emotional distress upon Plaintiff, or Defendant Father Simon knew or should have known and recklessly disregarded the substantial likelihood that severe emotional distress would be the likely result of his conduct.

46. The conduct of Defendant Father Simon in engaging in the explicit sexual behavior and lewd and lascivious conduct with a minor described above is extreme and outrageous, beyond all possible bounds of decency, and utterly intolerable in a civilized society.

47. The mental distress and emotional injuries Plaintiff suffered and will continue to suffer were and are lasting and severe.

48. As a direct and proximate result of Defendant Father Simon engaging in the explicit sexual behavior and lewd and lascivious conduct described above, Plaintiff suffered and will continue to suffer the severe injuries described herein.

49. By reason of the foregoing, Defendant Father Simon is liable to Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

FOURTH CAUSE OF ACTION

Negligent Hiring/Retention/Supervision/Direction

50. Plaintiff repeats and re-alleges each and every allegation set forth in

paragraphs 1 through 35 as if fully set forth herein.

51. Defendant Holy Name owed a duty of care to all minor persons, including Plaintiff, who were likely to come within the influence or supervision of Father Simon in his role as priest, counselor, trustee, director, officer, employee, agent, servant and/or volunteer, to insure that Father Simon did not use his assigned position to injure minors by sexual assault, sexual abuse, or sexual contact in violation of the laws of the State of New York.

52. Defendant Holy Name at all relevant times represented that its facilities were safe places for minors to attend, and that its priests were individuals to whom it was safe to entrust the care of minor children. Defendant Holy Name entered into an express and/or implied duty to safely treat Plaintiff and assumed the duty to protect and care for him.

53. Father Simon sexually assaulted, sexually abused, and had sexual contact with Plaintiff when Plaintiff was a minor in the State of New York.

54. Defendant Holy Name negligently hired, retained, directed, and supervised Father Simon, though they knew or should have known that Father Simon posed a threat of sexual abuse to minors.

55. Defendant Holy Name knew or should have known of Father Simon's propensity for the conduct which caused Plaintiff's injuries prior to, or at the time of, the injuries' occurrence.

56. Defendant Holy Name was negligent in failing to properly supervise Father Simon.

57. The sexual abuse of children by adults, including priests, is a foreseeable result of negligence.

58. At all times material hereto, Defendant Holy Name's actions were willful, wanton, malicious, reckless, negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

59. As a direct and proximate result, Plaintiff has suffered and will continue to suffer the injuries described herein.

60. Liabilities of Defendant Holy Name were transferred to, or assumed by, Defendant St. Charles. As a result, Defendant St. Charles is liable to the Plaintiff for the damages caused by Defendant Holy Name stated in this cause of action.

61. By reason of the foregoing, Defendants Holy Name and St. Charles are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

FIFTH CAUSE OF ACTION

Negligence/Gross Negligence

62. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 35 as if fully set forth herein.

63. Defendants Holy Name, St. Patrick's, St. Francis, De Sales, St. Augustine's, and St. Mary's knew, or were negligent in not knowing, that Father Simon posed a threat of sexual abuse to children.

64. The acts of Father Simon described hereinabove were undertaken, and/or enabled by, and/or during the course, and/or within the scope of his respective employment, appointment, assignment, and/or agency with Defendant Holy Name.

65. Defendant Holy Name owed Plaintiff, a minor at the relevant times of abuse, a duty to protect him from Father Simon's sexual deviancy and the consequential damages, both prior to and/or subsequent to Father Simon's misconduct.

66. Defendants St. Patrick's, St. Francis, De Sales, St. Augustine's, and St. Mary's had a duty not to assist, aid, and abet the Roman Catholic Bishop and Vicar General of Rochester in concealing the danger Father Simon posed to minor children.

67. Defendants Holy Name's, St. Patrick's, St. Francis', De Sales', St. Augustine's, and St. Mary's willful, wanton, grossly negligent and/or negligent act(s) of commission and/or omission, resulted directly and/or proximately in the damage set

forth herein at length.

68. Defendant Holy Name:

- a. gave improper or ambiguous orders or failed to make proper regulations, and/or employed improper persons or instrumentalities in work involving risk of harm to others;
- b. failed adequately to supervise the activities of Father Simon;
- c. permitted, and/or intentionally failed and/or neglected to prevent, negligent and/or grossly negligent conduct and/or allowed other tortious conduct by persons, whether or not their servants and/or agents and/or employees, upon premises or with instrumentalities under their control; and
- d. allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint to occur.

69. At all times material hereto, with regard to the allegations contained herein, Father Simon was under the supervision, employ, direction and/or control of Defendants Holy Name, St. Patrick's, St. Francis, De Sales, St. Augustine's, and St. Mary's.

70. At all times material hereto, Defendants Holy Name's, St. Patrick's, St. Francis', De Sales', St. Augustine's, and St. Mary's actions were willful, wanton, malicious, reckless, negligent and outrageous in their disregard for the rights and safety of Plaintiff, which amounted to conduct equivalent to criminality.

71. As a direct and/or indirect result of said conduct, Plaintiff has suffered and will continue to suffer the injuries and damages described herein.

72. Liabilities of Defendant Holy Name were transferred to, or assumed by, Defendant St. Charles. As a result, Defendant St. Charles is liable to the Plaintiff for the damages caused by Defendant Holy Name stated in this cause of action.

73. Liabilities of Defendants St. Francis and De Sales were transferred to, or assumed by, Defendant Our Lady. As a result, Defendant Our Lady is liable to the

Plaintiff for the damages caused by Defendants St. Francis and De Sales stated in this cause of action.

74. Liabilities of Defendant St. Augustine's were transferred to, or assumed by, Defendant St. Monica's. As a result, Defendant St. Monica's is liable to the Plaintiff for the damages caused by Defendant St. Augustine's stated in this cause of action.

75. Liabilities of Defendant St. Mary's were transferred to, or assumed by, Defendant Holy Family. As a result, Defendant Holy Family is liable to the Plaintiff for the damages caused by Defendant St. Mary's stated in this cause of action.

76. By reason of the foregoing, Defendants Holy Name, St. Charles, St. Patrick's, St. Francis, De Sales, Our Lady, St. Augustine's, St. Monica's, St. Mary's, and Holy Family are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

SIXTH CAUSE OF ACTION
Breach of Non-Delegable Duty

77. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 35 as if fully set forth herein.

78. Plaintiff, when he was a minor, was placed in the care and supervision of the Defendant Holy Name for the purposes of, *inter alia*, providing Plaintiff with a safe environment in which to participate in religious, educational, youth and recreational activities. There existed a non-delegable duty of trust between Plaintiff and Defendant Holy Name.

79. Plaintiff was a vulnerable child when placed within the care of Defendant Holy Name.

80. As a consequence, Defendant Holy Name was in the best position to prevent Plaintiff's abuse, to learn of Father Simon's sexual abuse of Plaintiff, and to stop it.

81. By virtue of the fact that Plaintiff was sexually abused as a minor child entrusted to the care of the Defendant Holy Name, Defendant Holy Name breached its non-delegable duty to Plaintiff.

82. At all times material hereto, Father Simon was under the supervision, employ, direction and/or control of Defendant Holy Name.

83. As a direct result of said conduct, Plaintiff has suffered and will continue to suffer the injuries and damages described herein.

84. Liabilities of Defendant Holy Name were transferred to, or assumed by, Defendant St. Charles. As a result, Defendant St. Charles is liable to the Plaintiff for the damages caused by Defendant Holy Name stated in this cause of action.

85. By reason of the foregoing, Defendants Holy Name and St. Charles are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

SEVENTH CAUSE OF ACTION

Breach of Fiduciary Duty

86. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 35 as if fully set forth herein.

87. There exists a fiduciary relationship of trust, confidence, and reliance between Plaintiff and Defendant Holy Name. This relationship is based on the entrustment of the Plaintiff while he was a minor child to the care and supervision of the agent or servant of the Defendant Holy Name. This entrustment of the Plaintiff to the care and supervision of the Defendant Holy Name, while the Plaintiff was a minor child, required Defendant Holy Name to assume a fiduciary relationship and to act in the best interests of the Plaintiff, as well as to protect him while he was a minor and vulnerable child.

88. Pursuant to their fiduciary relationship, Defendant Holy Name was entrusted with the well-being, care, and safety of Plaintiff.

89. Pursuant to their fiduciary relationship, Defendant Holy Name assumed a duty to act in the best interests of Plaintiff.

90. Defendant Holy Name breached its fiduciary duty to Plaintiff.

91. At all times material hereto, the actions and/or inactions of Defendant Holy Name were willful, wanton, malicious, reckless, negligent and outrageous in their disregard for the rights and safety of Plaintiff.

92. As a direct result of said conduct, Plaintiff has suffered and will continue to suffer the injuries and damages described herein.

93. Liabilities of Defendant Holy Name were transferred to, or assumed by, Defendant St. Charles. As a result, Defendant St. Charles is liable to the Plaintiff for the damages caused by Defendant Holy Name stated in this cause of action.

94. By reason of the foregoing, Defendants Holy Name and St. Charles are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

EIGHTH CAUSE OF ACTION

Negligent Infliction of Emotional Distress

95. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 35 as if fully set forth herein.

96. As described above, the actions of Defendant Holy Name, its agents, servants, and/or employees were conducted in a negligent and/or grossly negligent manner.

97. Defendant Holy Name's actions endangered Plaintiff's safety and caused him to fear for his own safety.

98. As a direct and proximate result of Defendant Holy Name's actions, which included but were not limited to negligent and/or grossly negligent conduct, Plaintiff suffered and will continue to suffer the severe injuries and damages described herein, including but not limited to, mental and emotional distress.

99. Liabilities of Defendant Holy Name were transferred to, or assumed by, Defendant St. Charles. As a result, Defendant St. Charles is liable to the Plaintiff for the damages caused by Defendant Holy Name stated in this cause of action.

100. By reason of the foregoing, Defendants Holy Name and St. Charles are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

NINTH CAUSE OF ACTION

Breach of Duty *in Loco Parentis*

101. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 35 as if fully set forth herein.

102. While he was a minor, Plaintiff was entrusted by his parents to the control of Defendant Holy Name, as well as directly to Father Simon, an agent or servant of Defendant Holy Name, for the purposes of *inter alia*, providing Plaintiff with appropriate guidance and an opportunity to enjoy educational and youth activities under responsible adult supervision. Defendant Holy Name owes — and owed — a duty to children entrusted to it to act *in loco parentis* and to prevent foreseeable injuries.

103. Defendant Holy Name breached its duty to act *in loco parentis*.

104. At all times material hereto, Defendant Holy Name's actions were willful, wanton, malicious, reckless, negligent, grossly negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

105. As a direct result of Defendant Holy Name's conduct, Plaintiff has suffered and will continue to suffer the injuries and damages described herein.

106. Liabilities of Defendant Holy Name were transferred to, or assumed by, Defendant St. Charles. As a result, Defendant St. Charles is liable to the Plaintiff for the damages caused by Defendant Holy Name stated in this cause of action.

107. By reason of the foregoing, Defendants Holy Name and St. Charles are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for

compensatory damages and for punitive damages, together with interest and costs.

TENTH CAUSE OF ACTION
Aiding and Abetting Fraud

108. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 35 as if fully set forth herein.

109. The Roman Catholic Bishop and Vicar General of Rochester fraudulently concealed from the parishioners of Holy Name information that would have shown Father Simon was a danger to minor children.

110. Defendants St. Patrick's, St. Francis, De Sales, St. Augustine's, and St. Mary's had information that would have shown Father Simon was a danger to minor children. Defendants St. Patrick's, St. Francis, De Sales, St. Augustine's, and St. Mary's assisted the Roman Catholic Bishop and Vicar General of Rochester in fraudulently concealing information from the parishioners about the danger Father Simon posed to parishioners.

111. If the information about the danger Father Simon posed to minors had not been concealed from parishioners, Father Simon would not have been assigned to Holy Name where Father Simon sexually assaulted, sexually abused, and/or had sexual contact with the Plaintiff.

112. To assist Rochester's Roman Catholic Bishop and Vicar General in fraudulently concealing the information about Father Simon, Defendants St. Patrick's, St. Francis, De Sales, St. Augustine's, and St. Mary's failed to disclose Father Simon's propensity to sexually abuse minors, and intentionally concealed knowledge of Father Simon's inappropriate and unlawful sexual activities, knowing that minor children, including Plaintiff, in other parishes where Father Simon was assigned would rely upon this material omission.

113. As a direct and/or indirect result of said conduct, Plaintiff has suffered and will continue to suffer the injuries and damages described herein.

114. Liabilities of Defendants St. Francis and De Sales were transferred to, or assumed by, Defendant Our Lady. As a result, Defendant Our Lady is liable to the Plaintiff for the damages caused by Defendants St. Francis and De Sales stated in this cause of action.

115. Liabilities of Defendant St. Augustine's were transferred to, or assumed by, Defendant St. Monica's. As a result, Defendant St. Monica's is liable to the Plaintiff for the damages caused by Defendant St. Augustine's stated in this cause of action.

116. Liabilities of Defendant St. Mary's were transferred to, or assumed by, Defendant Holy Family. As a result, Defendant Holy Family is liable to the Plaintiff for the damages caused by Defendant St. Mary's stated in this cause of action.

117. By reason of the foregoing, Defendants St. Patrick's, St. Francis, De Sales, Our Lady, St. Augustine's, St. Monica's, St. Mary's, and Holy Family are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs

WHEREFORE Plaintiff, demands judgment against the Defendants on each cause of action as follows:

- A. Awarding compensatory damages in an amount to be proved at trial, but in any event in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction;
- B. Awarding punitive damages to the extent permitted by law;
- C. Awarding prejudgment interest to the extent permitted by law;
- D. Awarding costs and fees of this action, including attorneys' fees, to the extent permitted by law; and
- E. Awarding such other and further relief as to this Court may seem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: December 5, 2019
New York, New York

Respectfully Submitted,

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